UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/NGO/56
14 March 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO
ANY FORMS OF DETENTION OR IMPRISONMENT

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 March 1997]

1. Torture continues to be a serious, widespread problem in Turkey. It is neither spontaneous nor rogue. While criminal suspects also face maltreatment at the hands of the regular police, Turkey's anti-terror police have methodically incorporated torture in their daily operations, utilizing special equipment, including tables fitted with straps, high pressure hoses, racks for suspending suspects by their arms, and instruments to apply electric shock. This unit deals with political offences, both violent and non-violent. Usually security detainees in such cases are connected with the conflict in south-eastern Turkey or with far-left groups. Under the law, they can be held for 15 days without access to a lawyer or arraignment before a magistrate; under the State of Emergency Law, which is at present in force in nine provinces in south-eastern Turkey, that period is doubled. The Government that was in power in Turkey from 1991 to 1995 took some steps, albeit imperfect, to address the problem. These initiatives, however, largely failed. Legal proceedings are rarely instituted against police for alleged abuse and torture, and when trials are launched, they drag on. Police are rarely arrested when they face criminal charges. All of this leads to a climate of impunity. In November 1996, the current coalition Government submitted a bill to reduce detention periods for security detainees from a maximum of 30 days to 10. This initiative has not been passed into law.

2. Human Rights Watch calls on the Commission on Human Rights to condemn torture in Turkey and to call on the Government of Turkey to disband the anti-terror police units and more aggressively prosecute abusive police. Further, the Commission should insist that detention periods for security detainees are reduced and that they are guaranteed access to counsel.

3. Maintenance of the draconian emergency regime in Northern Ireland continues severely to undermine respect for civil liberties. Expansive stop, search and arrest powers, restrictions on access to legal counsel, juryless Diplock courts, the erosion of the right to silence, and seven-day detention without charge contravene essential due-process guarantees. A number of international bodies, particularly the European Committee for the Prevention of Torture, have found that persons held under the emergency laws are vulnerable to both physical and psychological ill-treatment in detention. Moreover, the European Court of Human Rights has found the United Kingdom in violation of its obligations under the European Convention for the seven-day detention without charge provision.

4. Controversy over marches by loyalist fraternal orders through nationalist communities in the summer of 1996 gave rise to the worst violence Northern Ireland has experienced since the early 1980s. The police reversal of an earlier decision to re-route a march at Drumcree away from a nationalist area under threats of violence from loyalist marchers resulted in the widespread breakdown of law and order. Of particular concern was the subsequent disproportionate and indiscriminate use of over 5,000 plastic bullets against the nationalist community, which gave rise to allegations of excessive and sectarian use of force by the police. Human Rights Watch joins the renewed call for a ban on plastic bullets, which have killed 14 people in Northern Ireland and caused hundreds of severe injuries over the past 25 years.

5. Human Rights Watch recommends that the Special Rapporteur on human rights and states of emergency be given a specific mandate from the Commission on Human Rights to undertake an intensive investigation of the 75-year-old public emergency in Northern Ireland and to make recommendations to the Commission at its next session regarding the restoration of essential human rights guarantees in the United Kingdom.

6. Human Rights Watch remains deeply concerned about the prevalence of sexual abuse and degrading treatment by prison staff of women incarcerated in State prisons in the United States. Official avenues for investigating and remedying sexual abuse, where they exist, often do not work, and correctional employees continue to engage in abuse because they believe they can get away with it. Despite documentation of and public attention to the problem, state and federal officials, in some instances, have dismissed allegations of abuse as unfounded, and routinely have failed to implement reforms to prevent and remedy the sexual abuse of women in prison. Moreover, prison staff have retaliated against women prisoners who contributed to human rights reporting on the problem of sexual abuse. Recalcitrant state-level officials have refused to take the most basic steps to prevent abuse: many states fail to criminalize sexual contact between prison staff and prisoners; officials do not discipline prison staff responsible for sexual misconduct, instead leaving them in daily contact with prisoners; and prison authorities deny independent

monitors access to prisons. Although the United States federal Government has emphasized its concern about sexual abuse of women prisoners, its monitoring of prison abuses is inadequate and undersupported. Further, laws adopted in 1996 severely limit prisoners' ability to challenge abusive prison conditions in court. Human Rights Watch urges the Commission to call on the United States to ensure that (i) sexual contact between prison staff and prisoners is expressly criminalized; (ii) all officers responsible for sexual misconduct are disciplined; (iii) prison staff are trained to avoid sexual misconduct with prisoners; (iv) prisoners are guaranteed access to effective means for reporting sexual misconduct; (v) independent monitors have access to prisons; and (vi) sexual misconduct by prison staff is investigated and, where appropriate, prosecuted.

7. Human Rights Watch is concerned that Israel is holding at least 21 Lebanese in extended periods of detention, either without charge or trial or long beyond the expiration of their sentences. Among the Lebanese who have never been charged or tried are two prominent Shi'a leaders, Sheikh Abd al-Karim Obeid and Mustafa al-Dirani, who were abducted from their homes in 1989 and 1994 respectively, and have since been held incommunicado. Officials of past Israeli governments have conditioned the release of these two leaders on the release of, or the acquisition of information about, Israeli service persons missing in Lebanon (MIAs). Israeli officials also indicated more generally that the release of other Lebanese detainees was linked to the issue of Israeli MIAs. In holding detainees in this fashion, Israel has failed to place them under any regime of legal protection, either under humanitarian or international human rights law. Moreover, the transport by Israel of these detainees across international borders has complicated the issue of family visits, which are at best infrequent and in some cases non-existent.

8. The prohibition of hostage-taking is absolute and cannot be justified by the actions of other parties to a conflict. Insofar as Israel conditions the release of Lebanese detainees on securing information from third parties about Israeli MIAs, those detainees are being held as hostages. Human Rights Watch calls on the Commission to urge their unconditional release or that they be charged immediately with recognizable criminal offences and afforded a trial with full due-process guarantees.

9. Where a detainee's family visits have been rendered difficult or impossible owing to restrictions on travel between Israel and Lebanon, the Commission should encourage the Governments of Israel and Lebanon to cooperate in facilitating these visits. Israel must also end the incommunicado detention of detainees, including Obeid and al-Dirani, and allow visits to them by relatives, lawyers, and/or non-governmental organizations.

10. Lebanese citizens and Palestinian refugees continue to be apprehended by the Syrian security forces in Lebanon and transferred to Syria for imprisonment without charge or trial. The Lebanese security forces have sometimes participated in the handover of these persons to the Syrians and, according to testimony provided by former prisoners in 1996, some have been tortured in Lebanon while in Syrian custody prior to transfer to Syria. While some families have been permitted visits in Syria, others do not know where their relatives are being held or if they are dead or alive.

11. We call on the Commission to request that the Government of Syria disclose publicly the names of all non-Syrians currently in custody in Syria, including the names of the prisons and detention facilities where they are being held, and permit visits by family members and lawyers without delay. The Commission should also urge that the Syrian judicial authorities determine, on a case-by-case basis, if these individuals have been subjected to unlawful arrest or detention. In such cases individuals should be released immediately. Where individuals have been lawfully arrested and detained in Syria, they should be promptly charged with recognizable criminal offences and afforded a trial with full due-process guarantees, or released.

12. Human Rights Watch wishes to comment on the question raised by Commission on Human Rights resolution 1996/28 regarding the distinction between detention and imprisonment, as it pertains to the mandate of the Working Group on Arbitrary Detention. The original mandate of the Working Group is set forth with reference to a number of human rights instruments. Pertinent international human rights instruments use "detention" and "imprisonment" co-jointly. The Universal Declaration on Human Rights guarantees freedom from arbitrary arrest, detention or exile and to a fair and public hearing by an independent and impartial tribunal in determining any criminal charges. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the only international instrument that establishes a distinction between these two terms, clearly expresses the intention of the General Assembly that deprivation of liberty both pre- and post-trial be subject to human rights standards. The fact that this document is explicitly a basis for the Working Group's mandate underscores the need for the scrutiny not to stop once a national court has validated what may otherwise be an arbitrary deprivation of freedom.

13. Nearly half of the Working Group's decisions adopted in the past five years pertained to cases of persons who have been sentenced. If the Working Group were to limit its area of concern only to cases of detention before a judicial decision, this would lead to a form of selectivity. Human Rights Watch firmly believes that the concept of arbitrary detention applied by the Working Group must continue to include sentences decided by tribunals that are not independent or impartial.